Filed 6/25/10 P. v. Ayers CA5

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE, Plaintiff and Respondent, v. VICTORIA ROYALE AYERS, Defendant and Appellant.	F058471 (Super. Ct. No. RF005603A) **O P I N I O N**

THE COURT*

APPEAL from a judgment of the Superior Court of Kern County. Lee Phillip Felice, Judge.

Michele A. Douglass, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Senior Assistant Attorney General, Stephen G. Herndon and Jeffrey Grant, Deputy Attorneys General, for Plaintiff and Respondent.

-ooOoo-

---

*Before Dawson, Acting P. J., Hill, J., and Poochigian, J.

After the court denied her motion to suppress evidence (Pen. Code, § 1538.5), appellant Victoria Royale Ayers pled no contest to felony possession of methamphetamine (Health & Saf. Code, § 11377, subd. (a)). At the subsequent sentencing hearing, the court reduced the offense to a misdemeanor, suspended imposition of sentence, and placed appellant on three years' probation.

On appeal, appellant's sole contention is that the court erred in denying her suppression motion. We will affirm.

FACTS

On April 14, 2009, at approximately noon, Ridgecrest Police Detective Kristen Hanley, accompanied by a probation officer, went to probationer Richard Scholl's residence to conduct a probation search of that residence, a guest house located behind the home of Scholl's parents.[1] As the detective was arriving, she saw appellant walk out of the guest house.

Detective Hanley entered the guest house and began searching. She found, in the top drawer of a dresser "several Ziploc baggies which contained a white powdery substance. It was residue." She also found a glass smoking pipe of the kind "commonly used to ingest controlled substances." Based on her "training and experience," she suspected the residue was methamphetamine.

When Detective Hanley first entered the guest house she saw a purse on a barstool near the dresser. As she was leaving, after finding the pipe and the suspected methamphetamine in the dresser, she noticed a Ziploc baggie sticking out of a side pocket of the purse. She could see the top of the baggie, and that it contained "residue" that "looked like the powdery substance that [she] had seen in the other Ziploc bag." The

---

[1] Except as otherwise indicated, our factual statement is taken from Detective Hanley's testimony at the hearing on the suppression motion.

detective testified: "[I]n my training and experience, I believe that this [the residue she saw in the baggie] would have [been] suspected methamphetamine. [¶] ... [¶] In my training and experience, Ziploc baggies with residue on them typically have suspected methamphetamine in them. [¶] ... [¶] I knew there was suspected methamphetamine residue. I was not certain that there would be methamphetamine in the bottom of it."

Detective Hanley pulled the baggie out of the purse and saw "[s]uspected methamphetamine" in the "bottom part of [the baggie]."

Detective Hanley had been a peace officer for six years; she had received training in "narcotics packaging"; and she had "observed narcotics packaging on the street."

Richard Scholl testified to the following. Appellant was present at the guest house on April 14, 2009. She "placed [her] purse in [the guest house]." He saw the purse. There was "nothing sticking out of [it] ...."

The parties stipulated that no search warrant was obtained for the search of Scholl's residence.

DISCUSSION

Appellant argues that Detective Hanley's removal of the plastic bag from the purse constituted an unreasonable search, in violation of the Fourth Amendment of the United States Constitution. The People counter that the search was justified under the "plain view" doctrine.

The Fourth Amendment protects persons against unreasonable searches and seizures. (*People v. Williams* (1999) 20 Cal.4th 119, 125.) Searches and seizures inside a residence without a warrant are presumptively unreasonable. (*Mincey v. Arizona* (1978) 437 U.S. 385, 390.) The prosecution may overcome this presumption by establishing, inter alia, that the "plain view" doctrine applies. (*Horton v. California* (1990) 496 U.S. 128, 134.) Under the plain view doctrine, "if police are lawfully in a position from which they view an object, if its incriminating character is immediately

apparent, and if the officers have a lawful right of access to the object, they may seize it without a warrant. [Citations.] If, however, the police lack probable cause to believe that an object in plain view is contraband without conducting some further search of the object--*i.e.*, if 'its incriminating character [is not] "immediately apparent"' [citation]--the plain-view doctrine cannot justify its seizure." (*Minnesota* v. *Dickerson* (1993) 508 U.S. 366, 375 (*Dickerson*); accord, *People* v. *Bradford* (1997) 15 Cal.4th 1229, 1295.)

"The standard of appellate review of a trial court's ruling on a motion to suppress is well established. We defer to the trial court's factual findings, express or implied, where supported by substantial evidence. In determining whether, on the facts so found, the search or seizure was reasonable under the Fourth Amendment, we exercise our independent judgment." (*People* v. *Glaser* (1995) 11 Cal.4th 354, 362.)

Appellant does not dispute that when Detective Hanley first saw the plastic bag sticking out of the purse, before she removed the bag, the detective was "lawfully in a position" to view the bag and had "lawful right of access to" it. (*Dickerson*, *supra*, 508 U.S. at p. 375.) Appellant's argument focuses on the requirement that the seized object's "incriminating character" be "immediately apparent." (*Ibid*.) Specifically, she argues that Detective Hanley, before removing the bag, "could not determine with any certainty" that it contained, and therefore did not have probable cause to believe it contained, methamphetamine.

Appellant's argument fails because the test is not whether the officer could, without further inspection, determine with "certainty" that the plastic bag contained contraband. The requirement that an object's incriminating character be immediately apparent does not establish "a requirement that a police officer 'know' that certain items are contraband or evidence of a crime." (*Texas v. Brown* (1983) 460 U.S. 730, 742.) As indicated above, the standard is probable cause, and in this context, "probable cause is a flexible, common-sense standard. It merely requires that the facts available to the officer

would 'warrant a man of reasonable caution in the belief,' [citation], that certain items may be contraband or stolen property or useful as evidence of a crime; it does not demand any showing that such a belief be correct or more likely true than false. A 'practical, nontechnical' probability that incriminating evidence is involved is all that is required. [Citation.] Moreover, [the Supreme Court's] observation in *United States v. Cortez* [(1981)] 449 U.S. 411, 418, regarding 'particularized suspicion,' is equally applicable to the probable cause requirement: [¶] 'The process does not deal with hard certainties, but with probabilities. Long before the law of probabilities was articulated as such, practical people formulated certain common-sense conclusions about human behavior; jurors as factfinders are permitted to do the same--and so are law enforcement officers. Finally, the evidence thus collected must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement.'" (*Ibid*.)

Detective Hanley testified to, and the court reasonably could believe, the following: She had been a peace officer for six years; she had received training in "narcotics packaging" and had "observed narcotics packaging on the street"; she found, in a drawer in the same room in which she found the purse, several plastic bags and a pipe of the kind commonly used for ingesting "controlled substances"; the plastic bags found in the drawer were similar to the bag she saw sticking out of the purse; the white powdery residue in the bags in the drawer was similar to the residue visible in the bag that was sticking out of the purse; and she knew from her training and experience that plastic bags with the kind of residue appellant observed on the bag that was sticking out of the purse "typically" contain methamphetamine. In our view, these facts demonstrate that, under the principles set forth above, there was probable cause for Detective Hanley to believe, *before* she removed the plastic bag from the purse, that the bag contained methamphetamine.

In arguing that the detective lacked probable cause, appellant relies on *Arizona v. Hicks* (1987) 480 U.S. 321 (*Hicks*). In that case, officers lawfully entered the defendant's apartment in search of weapons after shots were fired from the apartment. (*Id*. at p. 323.) One of the officers noticed expensive stereo equipment that appeared to be out of place in the squalid apartment. (*Ibid.*) Suspecting that the items had been stolen, the officer read and recorded the serial numbers. (*Ibid.*) However, in order to do so, he moved some of the equipment. (*Ibid*.) This movement, the Supreme Court held, constituted a search for which probable cause was required (*id*. at pp. 324, 326); the prosecution conceded that the officer did not have probable cause to believe the equipment was stolen until he moved it (*id*. at p. 326); and therefore, the court held further, the movement of the equipment constituted an illegal search (*id*. at pp. 326-327).

Appellant likens the movement of the stereo equipment in *Hicks* to Detective Hanley's removal of the plastic bag from the purse. *Hicks*, however, is readily distinguishable because there the officer lacked probable cause for the search whereas in the instant case, as demonstrated above, the search in question was supported by probable cause. Accordingly, we conclude the challenged search was constitutionally reasonable under the plain view doctrine.[2]

DISPOSITION

The judgment is affirmed.

---

[2] Appellant also argues the removal of the plastic bag from the purse cannot be justified on the ground that the detective was conducting a probation search. Because we uphold the search under the plain view doctrine, we need not address this argument.